

[INSERTION FOR PAGE 71 OF THE SPECIFICATION, at line 15:]

1 To help establish the metes and bounds of the term "substantial-
2 ly", and most particularly the phrase "substantially exclusively" in
3 certain of the appended claims, it is to be understood that the purpose
4 of the broad term "substantially" is to prevent competitors from insti-
5 tuting trivial, i. e. insignificant, changes merely to cynically "get
6 around" the claim language.

7 This function of the terms "substantially" and "substantially
8 exclusively" is extensively elaborated in the patent-office history of
9 this document, particularly including caselaw cited by the Commissio-
10 ner's representative and discussed in the inventor's responses. The
11 Manual of Patent Examining Procedure states (emphasis added):

12 "The term 'substantially' is often used . . . to describe a
13 particular characteristic of the claimed invention. It is a
14 broad term."

15 The decision in the famous Festo case echoes the intended understanding
16 described above — though the present inventor aims to rely at least in
17 part on the term "substantially" rather than only on the now-rather-
18 controversial doctrine of equivalents. Festo says (emphasis added):

19 "The inventor who chooses to patent an invention and disclose
20 it to the public, rather than exploit it in secret, bears the
21 risk that others will devote their efforts toward exploiting
22 the limits of the patent's language: 'An invention exists
23 most importantly as a tangible structure or a series of draw-
24 ings. A verbal portrayal is usually an afterthought written
25 to satisfy the requirements of patent law. This conversion
26 of machine to words allows for unintended idea gaps which
27 cannot be satisfactorily filled. Often the invention is novel
28 and words do not exist to describe it. The dictionary does
29 not always keep abreast of the inventor. It cannot. Things
30 are not made for the sake of words, but words for things.'

31 Autogiro Co. of America v. United States, 384 F.2d 391, 397
32 [155 USPQ2d 697] (Ct. Cl. 1967).

33 "The language in the patent claims may not capture
34 every nuance of the invention or describe with complete
35 precision the range of its novelty. If patents were always
36 interpreted by their literal terms, their value would be
37 greatly diminished. Unimportant and insubstantial substi-
38 tutes for certain elements could defeat the patent, and its
39 value to inventors could be destroyed by simple acts of
40 copying."

41 Here the term "insubstantial", referring to the "substance" of the mat-
42 ter, stands in opposition, or in contrast, to the word "substantially".